

### Part III. --- Administrative, Procedural and Miscellaneous

#### **Alternative Disability Mortality Tables – Continued Reliance on Revenue Ruling 96-7**

Notice 2008-29

This notice provides guidance regarding the mortality tables that are permitted to be used to determine present values with respect to individuals who are entitled to benefits under a qualified defined benefit pension plan on account of disability. This notice reflects changes to the minimum funding requirements made by the Pension Protection Act of 2006, Pub. L. 109-280 (PPA '06).

#### **Background**

Pursuant to changes made by PPA '06, § 412 of the Internal Revenue Code provides minimum funding requirements for qualified defined benefit pension plans that generally apply for plan years beginning on or after January 1, 2008. Section 430 specifies the minimum required contribution that must be made for a single employer defined benefit plan under § 412 as modified by PPA '06. Section 431 specifies the amount that must be contributed under § 412 to a multiemployer defined benefit plan to avoid an accumulated funding deficiency in order to satisfy the requirements of § 412 as modified by PPA '06. Prior to these changes, the minimum funding requirements for qualified pension plans were set forth in § 412.

Prior to amendment by PPA '06, § 412(l)(7)(C)(ii) required the use of certain mortality tables to determine a plan's current liability, effective for plan years beginning after December 31, 1994. Section 412(l)(7)(C)(iii)(I) provided that, for purposes of determining current liability for plan years beginning after December 31, 1995, the Secretary was required to establish mortality tables that were permitted to be used, in lieu of the tables under § 412(l)(7)(C)(ii), to determine current liability under § 412(l) for individuals who were entitled to benefits under the plan on account of disability. The Secretary was required to establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occurred in plan years beginning after December 31, 1994. Under § 412(l)(7)(C)(iii)(II), the mortality table for individuals whose disabilities occurred in plan years beginning after December 31, 1994, applied only with respect to individuals who were disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

Rev. Rul. 96-7, 1996-1 C.B. 59, which was effective for plan years beginning after December 31, 1995, set forth the mortality tables that were permitted to be used pursuant to § 412(l)(7)(C)(iii)(I) for disabilities occurring in plan years beginning before January 1, 1995, and for disabilities occurring in plan years beginning after December 31, 1994.

Section 430(h)(3) provides rules regarding the mortality tables to be used in determining present values and making other computations under § 430. Section 430(h)(3)(D) provides that, for purposes of determining any present value or making any computation under § 430 for plan years beginning after December 31, 2007, the Secretary is to establish mortality tables that may be used, in lieu of the tables under § 430(h)(3)(A), for individuals who are entitled to benefits under the plan on account of disability. The Secretary is to establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after December 31, 1994. Under § 430(h)(3)(D)(ii), the mortality table for individuals whose disabilities occur in plan years beginning after December 31, 1994, applies only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Thus, the standard for the establishment of mortality tables that are permitted to be used with respect to individuals who are entitled to benefits under the plan on account of disability is the same under § 430(h)(3)(D) as the standard that previously applied under § 412(l)(7)(C)(iii).

Section 431 specifies the minimum funding requirements that apply to multiemployer plans. Under § 431(c)(6)(B), a plan's full funding limitation cannot be less than the excess (if any) of 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. Section 431(c)(6)(D)(iv), (v), and (vi) provide rules regarding the mortality tables to be used in determining a plan's current liability for this purpose. Section 431(c)(6)(D)(v)(I) provides that, for purposes of determining a plan's current liability, the Secretary is to establish mortality tables that may be used, in lieu of the tables that apply generally under § 431(c)(6)(D)(iv), for individuals who are entitled to benefits under the plan on account of disability. The Secretary is to establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after December 31, 1994. Under § 431(c)(6)(D)(v)(II), the mortality table for individuals whose disabilities occur in plan years beginning after December 31, 1994, applies only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Thus, like the standard for the establishment of mortality tables with respect to disabled participants under § 430(h)(3)(D), the standard for the establishment of mortality tables that are permitted to be used with respect to individuals who are entitled to benefits under a plan on account of disability under

§ 431(c)(6)(D)(v) is the same as the standard that previously applied under § 412(l)(7)(C)(iii).

### **Continued Use of Revenue Ruling 96-7 Disabled Mortality Tables**

Until further guidance is issued, the rules of Rev. Rul. 96-7 (including the mortality tables set forth in Rev. Rul. 96-7 as well as the rules regarding the determination of whether a benefit is payable on account of disability) apply under §§ 430(h)(3)(D) and 431(c)(6)(D)(v). As provided in § 1.430(h)(3)-2(c)(1)(iv) of the proposed Income Tax Regulations, the alternative mortality tables in Rev. Rul. 96-7 are permitted to be applied where employer-specific substitute mortality tables are used for nondisabled participants, but only if mortality experience with respect to disabled individuals for which those tables are used has been excluded in developing mortality rates for the substitute mortality tables.

### **Comments Requested**

The Service is considering issuing updated mortality tables under §§ 430(h)(3)(D) and 431(c)(6)(D)(v) that could be used with respect to individuals who are entitled to pension plan benefits on account of disability. Comments are requested regarding the construction of these updated mortality tables, including suggestions for sources of updated data regarding mortality experience with respect to disabled pension plan participants. In addition, comments are requested concerning the use of select and ultimate mortality tables under which mortality rates vary depending on the individual's age and the number of years that the individual has been disabled. Written comments should be submitted by June 23, 2008. Send submissions to CC:PA:LPD:DRU (Notice 2008-29), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, to CC:PA:LPD:DRU (Notice 2008-29), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking portal at <http://www.regulations.gov> (Notice 2008-29). All comments will be available for public inspection.

### **Drafting Information**

The principal author of this notice is David Ziegler of the Tax Exempt and Government Entities Division, Employee Plans. For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500 (a toll free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Mr. Ziegler can be contacted via e-mail at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).